

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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Case No. A-5908

PETITION OF JULIA CORONADO
(Hearing held September 10, 2003)

OPINION OF THE BOARD
(Effective date of Opinion, October 14, 2003)

This proceeding is a petition pursuant to Section 59-A-4.11(b) of the Zoning Ordinance (Chap. 59, Mont. Co. Code 1994, as amended) for variances from Section 59-C-323(b)(1). The existing single-family dwelling requires a 3.50 foot variance as it is within 3.50 feet of the side lot line and the proposed construction of a two-story addition requires a 2.87 foot variance as it is within 4.13 feet of the side lot line. The required side lot line setback is seven (7) feet.

Dana Haden, an architect, represented the petitioner at the public hearing.

The subject property is Lot 14, Block 20, B. F. Gilbert's Addition to Takoma Park Subdivision, located at 20 Hickory Avenue, Takoma Park, Maryland, 20912, in the R-60 Zone (Tax Account No. 01064531).

Decision of the Board: Requested variance for the existing single-family dwelling **granted**.
Requested variance for the two-story addition **denied**.

EVIDENCE PRESENTED TO THE BOARD

1. The petitioner proposes to construct a two-story addition at the rear of the residence.
2. Ms. Haden testified that the residence was built in 1923 and that the property has been designated as an outstanding resource in the historic district. A letter of support from the Historic Preservation Commission was entered into the record as Exhibit No. 8 and states that "The Commission feels that this is a very appropriate location for the proposed addition as it will be constructed to the rear of the house and not visible from the public-right-of way."
3. Ms. Haden testified that the house is currently located in the northern side yard setback. Ms. Haden testified that a prior addition would be removed and replaced with the two-story addition. Ms. Haden testified that the existing foundation would be used for the new construction and that the new addition would expand the existing structure's footprint.

FINDINGS OF THE BOARD

Based on the petitioner's binding testimony and the evidence of record, the Board finds that the variance for the two-story addition must be denied. The requested variance does not comply with the applicable standards and requirements set forth in Section 59-G-3.1 as follows:

- (a) *By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.*

The Board finds that the variance requested for the construction of a two-story addition is not as a result of an exceptional topographical or other condition peculiar to the property and that the property's historical characteristics do not create the need for a variance. The Board notes that the Historic Preservation Commission's review of the property relates to the architectural design of the proposed addition and not to an exceptional topographical or an extraordinary situation peculiar to the property.

The variance requested for the construction of a two-story addition does not meet the requirements of Section 59-G-1.3(a) and the Board did not consider the other requirements in that section for the grant of a variance. Accordingly, the requested variance of 2.87 feet from the required seven (7) foot side lot line setback is **denied**.

Based on the petitioner's binding testimony and the evidence of record, the Board finds that the variance for the existing single-family dwelling can be granted. The requested variance complies with the applicable standards and requirements set forth in Section 59-G-3.1 as follows:

- (a) *By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.*

The existing single-family dwelling was built in 1923 and is located in the side yard setback. The Board finds that these are exceptional circumstances peculiar to the property and that the strict application of the regulations would result in practical difficulties for the property owner.

- (b) *Such variance is the minimum reasonably necessary to overcome the aforesaid exceptional conditions.*

The Board finds that the variance requested for the existing single-family dwelling is the minimum reasonably necessary.

- (c) *Such variance can be granted without substantial impairment to the intent, purpose and integrity of the general plan or any duly adopted and approved area master plan affecting the subject property.*

The existing single-family dwelling continues the residential use of the property and the variance will not impair the intent, purpose, or integrity of the general plan or approved area master plan.

- (d) *Such variance will not be detrimental to the use and enjoyment of adjoining or neighboring properties.*

The Board finds that the residence has existed at its location for eighty years and the variance will not be detrimental to the use and enjoyment of the adjoining and neighboring properties.

Accordingly, the requested variance of 3.50 feet from the required seven (7) foot side lot line setback for the existing single-family dwelling is **granted**, subject to the following conditions:

1. The petitioner shall be bound by all of his testimony and exhibits of record, and the testimony of his witnesses, to the extent that such evidence and representations are identified in the Board's Opinion granting the variance.

The Board adopted the following Resolution:

Be it resolved by the Board of Appeals for Montgomery County, Maryland, that the Opinion stated above be adopted as the Resolution required by law as its decision on the above entitled petition.

Board member Donna L. Barron was necessarily absent and did not participate in this Resolution. On a motion by Louise L. Mayer, seconded by Allison Ishihara Fultz, with Angelo M. Caputo and Donald H. Spence, Jr., Chairman, in agreement, the Board adopted the foregoing Resolution.

Donald H. Spence, Jr.
Chairman, Montgomery County Board of Appeals

I do hereby certify that the foregoing
Opinion was officially entered in the
Opinion Book of the County Board of
Appeals this 14th day of October, 2003

Katherine Freeman
Executive Secretary to the Board

NOTE:

See Section 59-A-4.53 of the Zoning Ordinance regarding the twelve (12) month period within which the variance granted by the Board must be exercised.

The Board shall cause a copy of this Opinion to be recorded among the Land Records of Montgomery County.

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date of the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.